

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BARRACK, RODOS & BACINE,

Plaintiff,

v.

BALLON STOLL BADER & NADLER, P.C.,

Defendant.

Civil Action No. 08 CV 02152(PKL)

ELECTRONICALLY FILED

STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1

Plaintiff, Barrack, Rodos & Bacine (“BR&B”), pursuant to Rule 56.1 of the Local Rules of the Southern District of New York, submits this statement of material facts as to which there are no genuine issues to be tried.

1. A. Arnold Gershon and A. Arnold Gershon, P.C. signed an agreement with Ballon Stoll Bader & Nadler, P.C. (“Ballon”) (the “Ballon-Gershon Agreement”) that contains an arbitration clause requiring them to arbitrate disputes. *See* Declaration of Daniel E. Bacine (“Bacine Decl.”)¹ Exhibit 8.
2. BR&B did not sign the Ballon-Gershon Agreement or any other agreement with Ballon that contained a provision compelling BR&B to participate in arbitration proceedings with Ballon. *See* Bacine Decl. Exhibits 2, 4-6 and 8.
3. By order dated May 23, 2007, in the matter styled *Seinfeld v. Barrett, et al.*, No. 05-298 (JJF) (D. Del. May 16, 2005) (“*Intel*”), plaintiff’s counsel was awarded attorneys’ fees and reasonable out-of-pocket disbursements in the amount of \$862,500, which under the order was paid to BR&B. *See* Bacine Decl. at ¶ 5.
4. The fee petition submitted by BR&B in the *Intel* matter did not rely on or mention the Ballon-Gershon Agreement. *See* Bacine Decl. Exhibit D.

¹ All references to the “Bacine Decl.” are to the Declaration of Daniel E. Bacine previously submitted to the Court in support of BR&B’s motion for preliminary injunction.

5. A. Arnold Gershon has no equity interest in BR&B or in any cases he works on.
See Bacine Decl. Exhibit 1 at ¶ 9.

Dated: May 15, 2008

Respectfully submitted,

BARRACK, RODOS & BACINE

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and

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